

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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LISA C.,

Plaintiff,

v.

5:21-CV-0042  
(ML)

COMMISSIONER OF SOCIAL  
SECURITY,

Defendant.

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APPEARANCES:

OF COUNSEL:

OLINSKY LAW GROUP  
Counsel for the Plaintiff  
250 South Clinton Street - Suite 210  
Syracuse, New York 13202

MELISSA A. DELGUERCIO, ESQ.

SOCIAL SECURITY ADMINISTRATION  
Counsel for the Defendant  
J.F.K. Federal Building, Room 625  
15 New Sudbury Street  
Boston, Massachusetts 02203

HUGH DUN RAPPAPORT, ESQ.  
Special Assistant U.S. Attorney

MIROSLAV LOVRIC, United States Magistrate Judge

**ORDER**

Currently pending before the Court in this action, in which Plaintiff seeks judicial review of an adverse administrative determination by the Commissioner of Social Security, pursuant to 42 U.S.C. §§ 405(g) and 1383(c)(3), are cross-motions for judgment on the pleadings.<sup>1</sup> Oral

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<sup>1</sup> This matter, which is before me on consent of the parties pursuant to 28 U.S.C. § 636(c), has been treated in accordance with the procedures set forth in General Order No. 18. Under that General Order once issue has been joined, an action such as this is considered procedurally, as if cross-motions for judgment on the pleadings had been filed pursuant to Rule 12(c) of the Federal Rules of Civil Procedure.

argument was heard in connection with those motions on September 19, 2022, during a telephone conference conducted on the record. At the close of argument, I issued a bench decision in which, after applying the requisite deferential review standard, I found that the Commissioner's determination was supported by substantial evidence, providing further detail regarding my reasoning and addressing the specific issues raised by Plaintiff in this appeal.

After due deliberation, and based upon the Court's oral bench decision, which has been transcribed, is attached to this order, and is incorporated herein by reference, it is

**ORDERED** as follows:

- 1) Plaintiff's motion for judgment on the pleadings (Dkt. No. 17) is DENIED.
- 2) Defendant's motion for judgment on the pleadings (Dkt. No. 20) is GRANTED.
- 3) The Commissioner's decision denying Plaintiff Social Security benefits is AFFIRMED.
- 4) Plaintiff's Complaint (Dkt. No. 1) is DISMISSED.
- 5) The Clerk of Court is respectfully directed to enter judgment, based upon this determination, DISMISSING Plaintiff's Complaint in its entirety and closing this case.

Dated: September 20, 2022  
Binghamton, New York

A handwritten signature in black ink, reading "Miroslav Lovric", written over a horizontal line.

Miroslav Lovric  
United States Magistrate Judge  
Northern District of New York

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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C

vs.

5:21-CV-0042

COMMISSIONER OF SOCIAL SECURITY

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DECISION AND ORDER

September 19, 2022

The HONORABLE MIROSLAV LOVRIC,  
DISTRICT MAGISTRATE JUDGE

A P P E A R A N C E S

For Plaintiff: MELISSA DelGUERCIO, ESQ.

For Defendant: HUGH RAPPAPORT, ESQ.

*Ruth I. Lynch, RPR, RMR, NYSRCR  
Official United States Court Reporter  
Binghamton, New York 13901*

1           THE COURT: All right. The Court's going to  
2 begin its analysis and decision as follows:

3           First, I note that plaintiff has commenced this  
4 proceeding pursuant to Title 42 United States Code sections  
5 405(g) and 1383(c) to challenge the adverse determination by  
6 the Commissioner of Social Security finding that she was not  
7 disabled at the relevant times and therefore ineligible for  
8 the benefits that she sought.

9           By way of background, the Court notes as follows:

10          Plaintiff was born in 1969. She is currently  
11 approximately 53 years of age. She was approximately 47  
12 years old at the alleged onset of her disability on  
13 January 9 of 2017.

14          Plaintiff lives in an apartment with her adult  
15 son.

16          Plaintiff is approximately 5 feet zero inches in  
17 height and weighs approximately 162 pounds.

18          Plaintiff has a master's degree in nursing.

19          Plaintiff's activities of daily living include  
20 preparing meals, doing household chores, helping to take  
21 care of three cats, shopping, driving, going out alone,  
22 attending church and a variety of appointments and meetings,  
23 handling money, reading, using Facebook, talking with  
24 friends, watching television and self-help videos,  
25 meditating, listening to motivational speakers, volunteering

1 at church events, and speaking to nursing students about  
2 addiction.

3           Procedurally the Court notes as follows for this  
4 case:

5           Plaintiff applied for Title II and Title XVI  
6 benefits on January 31, 2019, alleging an onset date of  
7 January 9 of 2017. Administrative Law Judge Gretchen  
8 Greisler conducted a hearing on March 6 of 2020 to address  
9 plaintiff's application for benefits. ALJ Greisler issued  
10 an unfavorable decision on March 13 of 2020. This became a  
11 final determination of the agency on November 10th of 2020  
12 when the Social Security Administration Appeals Council  
13 denied plaintiff's application for review.

14           This action was commenced on January 13th of 2021,  
15 and it is timely.

16           In her decision, ALJ Greisler applied the familiar  
17 five-step test for determining disability.

18           At step one, the ALJ concluded that plaintiff had  
19 not engaged in substantial gainful activity since January 9  
20 of 2017, the alleged onset date.

21           At step two, the ALJ concluded that plaintiff  
22 suffers from severe impairments that impose more than  
23 minimal limitations on her ability to perform basic work  
24 activities, specifically carpal tunnel syndrome/neuropathy,  
25 basilar thumb joint arthritis, spine disorder, depressive

1 disorder, anxiety disorder, bulimia nervosa, and PTSD.

2 At step three, ALJ Greisler concluded that  
3 plaintiff's conditions do not meet or medically equal any of  
4 the listed presumptively disabling conditions set forth in  
5 the Commissioner's regulations, and the ALJ focused on  
6 listing 1.02 dealing with major dysfunction of a joint;  
7 listing 1.04 dealing with disorder of the spine;  
8 listing 11.14 dealing with peripheral neuropathy;  
9 listing 12.04 dealing with depressive, bipolar, and related  
10 disorders; listing 12.06 dealing with anxiety and  
11 obsessive-compulsive disorders; listing 12.13 dealing with  
12 eating disorders; and listing 12.15 dealing with trauma and  
13 stressor related disorders. The ALJ also considered mental  
14 health disorders under 20 CFR 404.1520a and 416.920a.

15 Next, the ALJ determined that plaintiff retains  
16 the residual functional capacity to perform light work  
17 except that she cannot climb ladders, ropes, or scaffolds or  
18 work at unprotected heights. The ALJ concluded plaintiff  
19 can occasionally climb ramps and stairs, balance, stoop,  
20 kneel, crouch, and crawl. Plaintiff can also frequently  
21 handle, finger, and feel. The ALJ also concluded plaintiff  
22 requires ready access to a restroom but her need to use the  
23 restroom can generally be accommodated by the customary  
24 morning, midday, and afternoon breaks. The ALJ also  
25 indicated that mentally plaintiff can perform simple work at

1 a consistent but not goal oriented pace. She can tolerate  
2 occasional contact with supervisor and coworkers. And  
3 plaintiff can also make simple decisions directly related to  
4 her work and tolerate minor changes.

5 At step four, the ALJ concluded that plaintiff  
6 could not perform her past relevant work as medical center  
7 nurse, nurse manager, lead medical instructor, or medical  
8 program director.

9 At step five, the ALJ concluded that based on the  
10 testimony of the vocational expert and considering  
11 plaintiff's age, education, work experience, and RFC,  
12 plaintiff can perform the requirements of representative  
13 occupations such as hand packager, assembler small parts,  
14 and final assembler. As a result, the ALJ concluded that  
15 plaintiff has not been under a disability as defined in the  
16 Social Security Act from January 9th, 2017, through the date  
17 of the ALJ's decision.

18 Now, as you know, the Court's functional role in  
19 this case is limited and extremely deferential. I must  
20 determine whether correct legal principles were applied and  
21 whether the determination is supported by substantial  
22 evidence, defined as such relevant evidence as a reasonable  
23 mind would find sufficient to support a conclusion. As the  
24 Second Circuit noted in *Brault V. Social Security*  
25 *Administration Commissioner*, that can be found at 683 F.3d

1 443, a 2012 case, and therein the Circuit stated that the  
2 standard is demanding, more so than the clearly erroneous  
3 standard. The Court in Brault also noted that once there is  
4 a finding of fact, that fact can only be rejected if a  
5 reasonable fact-finder would have to conclude otherwise.

6 Now, on appeal plaintiff raises one contention.  
7 Plaintiff argues that the ALJ's RFC determination is not  
8 supported by substantial evidence because the ALJ failed to  
9 properly evaluate the opinion evidence regarding her mental  
10 impairments. The Court notes that in plaintiff's brief the  
11 plaintiff indicates plaintiff does not contest the ALJ's  
12 findings as to plaintiff's physical impairments. And in  
13 that brief plaintiff articulates that the issue on appeal is  
14 only plaintiff's mental impairment.

15 The Court begins its analysis as follows:

16 The record contains five evaluations regarding  
17 plaintiff's mental health functioning. First, a mental  
18 health evaluation by Dr. Noia dated April 15th, 2019.  
19 That could be found at docket number 12 at 586 to 590,  
20 transcript pages 581 to 585. And therein Dr. Noia concluded  
21 that plaintiff had the following:

22 No limitations understanding, remembering or  
23 applying simple directions and instructions; using reasoning  
24 and judgment to make work-related decisions; sustaining  
25 concentration and performing a task at a consistent pace;



1 sustaining an ordinary routine and regular attendance at  
2 work; maintaining personal hygiene and wearing appropriate  
3 attire; and being aware of normal hazards and taking  
4 appropriate precautions. Dr. Noia therein also concluded  
5 that plaintiff had mild limitations as it relates to  
6 understanding, remembering, or applying complex directions  
7 and instructions; and interacting adequately with  
8 supervisors, coworkers, and the public. And Dr. Noia also  
9 therein noted that the plaintiff had marked -- moderate to  
10 marked limitations as to regulating emotions, controlling  
11 behavior, and maintaining well-being.

12           Next, consultative reviewer Dr. D'Ambrocio  
13 evaluated plaintiff's medical records and issued an opinion  
14 dated April 25th, 2019, therein opining that plaintiff had  
15 no more than moderate work-related mental limitations. See  
16 docket number 12 at 67 to 96, and that's transcript pages 62  
17 through 6 -- through 91.

18           Next, consultative reviewer Dr. Ferrin evaluated  
19 plaintiff's medical records and issued an opinion dated  
20 July 12th of 2019, therein opining that plaintiff had no  
21 more than moderate work-related mental limitations. See  
22 docket number 12 at 99 through 135, transcript pages 94  
23 through 130.

24           Next, treating physician Dr. Zebrowski completed a  
25 form entitled Medical Assessment of Ability to do

1 Work-Related Activities, parentheses, mental, dated  
2 September 27th, 2019, see docket number 12 at 821 through  
3 825, transcript pages 816 to 820, in which Dr. Zebrowski  
4 opined that plaintiff had the following:

5 Dr. Zebrowski opined plaintiff had a good ability  
6 to follow work rules, understanding, remember, and carry out  
7 simple instructions, and maintain her personal appearance.

8 Dr. Zebrowski opined plaintiff had a fair ability  
9 to relate to coworkers, make judgments on simple  
10 work-related decisions, and behave in an emotionally stable  
11 manner.

12 Dr. Zebrowski also opined plaintiff had marked  
13 limitations in all other areas of work-related mental  
14 functioning.

15 Dr. Zebrowski also opined that plaintiff is  
16 incapable of any work stress. And then, lastly, he opined  
17 that plaintiff would be off task 40 to 60 percent of the  
18 average day and absent from work more than 4 days per month.

19 Next, treating clinician Michelle Warner completed  
20 a form titled Medical Assessment of Ability to do  
21 Work-Related Activities, parentheses, mental, dated  
22 November 1, 2019, and that can be found at docket number 12  
23 at 862 through 866, transcript pages 857 to 861, in which  
24 Miss Warner opined the same limitations as Dr. Zebrowski.

25 Now, the ALJ found all of the mental health

1 evaluations at least partially persuasive but that the  
2 record does not support marked limitations in any of the  
3 functioning areas.

4           The Court next turns to the analysis and first  
5 indicates that for the reasons set forth in defendant's  
6 brief, I find that the ALJ properly evaluated the medical  
7 opinions. With respect to the ALJ's consideration of  
8 Dr. Noia's opinion, the ALJ supportably concluded that  
9 Dr. Noia's moderate to marked limitations regulating  
10 emotions, controlling behavior, and maintaining well-being  
11 were not supported by his own examination findings and were  
12 inconsistent with the other evidence. The Court notes, as  
13 defendant highlighted in her brief, the ALJ noted several of  
14 Dr. Noia's findings that did not support the moderate to  
15 marked limitations that he opined. For example, Dr. Noia  
16 found plaintiff's demeanor and responsiveness to questions,  
17 quote, cooperative, end quote. In addition, Dr. Noia found  
18 plaintiff's manner of relating, social skills, and overall  
19 presentation as, quote, adequate, end quote.

20           In addition, as set forth in defendant's brief,  
21 many of plaintiff's mental status findings were largely  
22 benign, plaintiff's daily activities included attending  
23 church, attending a variety of appointments and meetings on  
24 a regular basis, talking with friends, meditating, doing  
25 volunteer activities, and talking with nursing students

1 about addiction. Dr. Noia's moderate to marked limitations  
2 were also inconsistent with, one, the medical opinions of  
3 Dr. D'Ambrocia and Dr. Ferrin, who both concluded that  
4 plaintiff's ability to get along with others without  
5 exhibiting behavioral extremes was not significantly  
6 limited, and, two, the opinions of Dr. Zebrowski and Miss  
7 Warner who opined that plaintiff had a fair ability to  
8 behave in an emotionally stable manner.

9 With respect to the ALJ's consideration of  
10 Dr. Zebrowski and Miss Warner's opinions, the ALJ did not  
11 err in concluding that their marked limitations in areas  
12 such as dealing appropriately with the public, using  
13 judgment, dealing with work stress, interacting with  
14 supervisors or managers, and relating predictably in social  
15 situations were unpersuasive. Much like the ALJ's analysis  
16 regarding Dr. Noia's opinion, the ALJ based her analysis in  
17 a discussion of the supportability and consistency factors.

18 As defendant set forth in her brief and the ALJ  
19 noted in her opinion, although Dr. Zebrowski's treatment  
20 notes contained greater mental status findings,  
21 Dr. Zebrowski treated plaintiff only one time before  
22 rendering an opinion and Dr. Zebrowski's opinion was  
23 inconsistent with the findings of plaintiff's other  
24 providers, including her therapist.

25 As defendant set forth in her brief and as the

1 ALJ noted in her opinion, the record does not contain any  
2 treatment notes from Miss Wierner -- Miss Warner, excuse me,  
3 despite her opinions stating that she had been treating  
4 plaintiff since November of 2018. In addition, the ALJ  
5 supportably concluded that plaintiff's mental status  
6 examinations were largely normal and plaintiff's reported  
7 activities and abilities were inconsistent with marked  
8 mental limitations. The ALJ supportably noted that  
9 plaintiff consistently attended appointments and meetings as  
10 an additional basis for rejecting Dr. Zebrowski's and Miss  
11 Warner's opinions that plaintiff would be off task 40 to  
12 60 percent of the average day and absent from work more than  
13 4 days per week month.

14 Based upon this analysis and for the reasons set  
15 forth in the record, I therefore conclude that plaintiff's  
16 motion for judgment on the pleadings is denied. Defendant's  
17 motion for judgment on the pleadings is granted.  
18 Plaintiff's complaint is hereby dismissed, and the  
19 Commissioner's decision denying plaintiff benefits is  
20 hereby affirmed.

21 This constitutes the decision and analysis of the  
22 Court.

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